

ORDINANCE NO. 7,758-N.S.

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY ADDING CHAPTER 13.113, RELATING TO PERSONAL LIABILITY IN COMMERCIAL LEASES DURING THE COVID-19 PANDEMIC; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

BE IT ORDAINED By the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Personal Liability Provisions of Commercial Leases During the COVID-19 Pandemic Ordinance

Section 2. That Chapter 13.113 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 13.113**

**Personal Liability Provisions of Commercial Leases During the COVID-19 Pandemic**

**13.113.010 Findings and Purpose**

**13.113.020 Prohibition on Enforcement of Personal Liability Provisions Arising from Commercial Leases**

**13.113.030 Definitions**

**13.113.040 Severability.**

**13.113.010 Findings and Purpose.**

The global pandemic caused by the novel coronavirus named "SARS-CoV-2", ("COVID-19") has resulted in extraordinary measures by state and local government to reduce the spread of infection. These measures have had their most pronounced impact upon small businesses who have been forced to close or drastically reduce services and/or customer capacity in order to do their part in protecting public health.

On March 16, 2020, the City of Berkeley Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. This Shelter in Place Order was subsequently extended and amended and economic activity in Berkeley remains constrained by both state and local public health orders.

On March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants. This order was extended by Executive Order N-03-21, through June 30, 2021.

The restrictions set forth in these public health orders have had lasting impacts upon many businesses in Berkeley, resulting in significant revenue reductions and job losses in a variety of sectors, including retail, hospitality, and the performing arts. In April 2020, a poll of small businesses found the pandemic was already taking a steep toll: more than two-fifths of the businesses surveyed expected greater than 80% revenue loss over the three months from when the pandemic began impacting the community; more than half (56%) expected to close permanently; and 33% “reduced salaries or staff hours” to avoid business closure. Thousands were left unemployed in key Berkeley industry sectors, including significant job losses tourism and hospitality (especially lodging, food and beverage, and arts and cultural industries); retail (especially clothing and accessories); and personal and professional service industries (e.g. gyms and fitness studios, salons, employment services). Moreover, mandatory statewide industry guidance has forced many businesses to remain closed or to operate at extremely limited capacities. The eviction protections authorized by the Governor and the City of Berkeley have not prevented many local businesses from being forced to permanently close, and many other local businesses that remain open have been forced to default on their rent obligations and cannot hope to completely pay back what they owe in the foreseeable future.

Small businesses are the cultural and economic lifeblood of Berkeley, giving the City its distinctive character, providing access to essential goods and services, and creating jobs and economic opportunities. As of 2019, there were approximately 5,000 small businesses in Berkeley, accounting for approximately 40% of the jobs in the City. The fiscal impact of businesses to the City of Berkeley is substantial; roughly a quarter of the City’s general fund revenues are generated by business-related taxes.

Berkeley has come together as a community to share the burdens imposed by the COVID-19 pandemic, but many small business owners remain in desperately precarious financial circumstances. These valued community members should be able to make sound business decisions and live without the fear that the pandemic will cost them not only their customers and revenues but also their personal assets and homes. This legislation does not forgive or erase the rent debts accrued by small businesses during the pandemic, it merely seeks to protect the owners of those businesses from devastating personal financial consequences. In enacting this legislation, the City seeks to prevent the loss of even more of the small businesses that make our local economy vibrant and unique.

No one could have predicted the pandemic, nor could anyone have predicted that a year later many local businesses would still be required to operate at reduced capacity. Landlords and business owners alike must share the burdens of these public health restrictions, and should share the goal of rebuilding a vibrant local economy.

### **13.113.020 Prohibition on Enforcement of Personal Liability Provisions Arising from Commercial Leases**

No Personal Liability Provision arising from the default in payments due under the terms of a Commercial Lease may be enforced against an individual where the default allowing

for such enforcement occurred during the COVID-19 Period and is the result of the Impacts of COVID-19 Public Health Orders.

### **13.113.30 Definitions**

- A. COVID-19 Period. The term "COVID-19 Period" means March 16, 2020 through the 30<sup>th</sup> day after the expiration of the prohibition on commercial evictions authorized by Executive Order N-28-20 as extended by Executive Order N-03-21 and any subsequent extension thereof.
- B. Impacts of COVID-19 Public Health Orders. The term "Impacts of COVID-19 Public Health Orders" means a material decrease in business income (or a material increase in operating expenses) caused by a public health order or applicable industry guidance, during the effective period of such order or guidance. Impacts of COVID-19 Public Health Orders include but are not limited to forced closure or substantial reduction in operating capacity, and costs incurred to achieve compliance.
- C. Personal Liability Provision. The term "Personal Liability Provision" means, with respect to a Commercial Lease, a term that provides for an individual who is not the tenant to become wholly or partially personally liable for the rent, charges, or other sums required to be paid by the business, upon the occurrence of a default in payment. The term "Personal Liability Provision" includes the execution of a separate instrument that would otherwise qualify as a Personal Liability Provision if it were included within the terms of the underlying Commercial Lease under which the rent came due, and the individual to be held liable for the rent is a natural person rather than a business entity.
- D. Commercial Lease. The term "Commercial Lease" means a lease, sublease or any other rental agreement involving commercial real property as defined as defined in subdivision (d) of Section 1954.26 of the California Civil Code.

### **13.113.040 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

### Section 3. Vote Required, Immediately Effective

Based on the findings and evidence in Section 13.112.010 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the

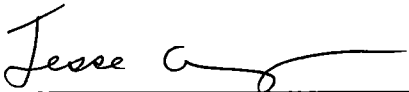
Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.


At a regular meeting of the Council of the City of Berkeley held on April 20, 2021, this Urgency Ordinance was adopted by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
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Jesse Arreguin, Mayor

ATTEST:   
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Mark Numainville, City Clerk

In effect: Immediately